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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

REVMOUNTAIN, LLC, *et al.*,

Defendants.

Case No. 2:17-cv-02000-APG-GWF

**SUBSCRIPTION DEFENDANTS'
AND DEFENDANT BLAIR MCNEA'S
UNOPPOSED MOTION FOR LEAVE
TO FILE FIRST AMENDED ANSWER
TO COMPLAINT**

ORDER

1 The Subscription Defendants¹ and Defendant Blair McNea (collectively the
2 “**Defendants**”), through their undersigned counsel, hereby file this Unopposed Motion for Leave
3 to File First Amended Answer to Complaint. As grounds therefore, the Defendants state as
4 follows:

5 **CERTIFICATE OF CONFERRAL**

6 Pursuant to Nevada Local Rules of Civil Procedure LR IA 1-3(f), Defendants have met
7 and conferred with the FTC in good faith regarding this Motion for Leave, and the FTC has
8 indicated it does not oppose the relief requested herein to file a motion for leave to file an
9 amended answer. The FTC has indicated that it reserves the right to challenge the contents and
10 legal basis of the Defendants’ amendments to the answer at later proceedings.

11 **INTRODUCTION**

12 Defendants filed their answer to the FTC’s complaint on September 9, 2017. Pursuant to
13 the Court’s Scheduling order, the deadline to amend or add parties is December 7, 2017. In
14 response to this deadline, Defendants have filed this motion seeking leave of court to file its first
15 amended answer to complaint as attached hereto. The amendments to the Defendants’ Answer
16 include the addition of three affirmative defenses noted as Defenses 11-13 in the Amended
17 Answer. The Ninth Circuit applies Rule 15’s policy of favoring amendments with extreme
18 liberality. This motion was timely filed within the Court’s deadline to amend pleadings.
19 Therefore, the Defendants’ respectfully request that the Court grant its Motion for Leave to file
20 First Amended Answer.

21 **ARGUMENT**

22 “A party may amend its pleading once as a matter of course within: (A) 21 days after
23 serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after
24 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),
25 whichever is earlier.” Fed.R.Civ.P. 15(a). Otherwise, a party must seek leave of court to amend
26 a pleading. Fed.R.Civ.P. 15(a)(2).

27
28 ¹ The Subscription Defendants include all of the Defendants except for: RoadRunner B2C, LLC, also d/b/a RevGO, LLC;
RevGuard, LLC; RevLive!, LLC; Danielle Foss; and Jennifer Johnson.

1 The determination of whether to grant leave to amend lies “within the sound discretion of
 2 the trial court,” *DCD Programs, Ltd. v. United States*, 833 F.2d 183, 185 (9th Cir.1987) (citing
 3 *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981)), but such discretion should be guided
 4 by the underlying purpose of Rule 15—facilitation of a decision on the merits. *See DCD*
 5 *Programs, Ltd. v. Leighton*, 883 F.2d 183, 186 (9th Cir.1987) (citation omitted). Rule 15's
 6 policy of favoring amendments is applied in the Ninth Circuit with “extreme liberality.” *Owens*
 7 *v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir.2001) (quoting *Morongo Band of*
 8 *Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990)). While the court should freely
 9 give leave to amend when justice requires, leave need not be granted where amendment: “(1)
 10 prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in
 11 litigation; or (4) is futile.” *Amerisource Bergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951
 12 (9th Cir.2006) (citation omitted). Absent prejudice, or a strong showing of any of the remaining
 13 factors, a presumption exists under Rule 15 in favor of granting leave to amend. *Eminence*
 14 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

15 Granting leave to file an amended answer with additional affirmative defenses will not
 16 cause prejudice or produce an undue delay in litigation. As noted above, the Court’s scheduling
 17 order has set December 7, 2017 as the deadline for amending pleadings or adding parties. This
 18 timely motion will not cause prejudice because discovery as not yet taken place and an amended
 19 answer does not require a responsive pleading from the FTC. Furthermore, the amendments are
 20 not sought in bad faith as the additional defenses are rooted in Supreme Court law. Finally,
 21 granting leave to amend will not cause and undue delay in litigation because the motion is timely
 22 filed within the Court’s deadline to amend pleadings.

23 The Ninth Circuit applies Rule 15’s policy of favoring amendments with “extreme
 24 liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001). As
 25 noted above, the Court’s scheduling order has set today, December 7, 2017 as the deadline for
 26 amending pleadings or adding parties. Therefore, the Defendants request that the Court grant its
 27 unopposed Motion for Leave to File its First Amended Answer to Complaint. Pursuant to
 28

1 District of Nevada Local Rules of Civil Procedure 15-1, the First Amended Answer is attached to
2 this motion as **Exhibit A**.


3 WHEREFORE, for the reasons stated above, the Defendants respectfully request that the
4 Court grant the Unopposed Motion for Leave to File First Amended Answer to Complaint
5 attached hereto, pursuant to Federal Rule of Civil Procedure 15.

6
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20 **IT IS SO ORDERED.**


ANDREW P. GORDON
UNITED STATES DISTRICT
JUDGE 12/11/2017